

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF IDAHO

IN RE)	
)	Case No. 99-42066
DOUGLAS B. EGBERT and)	
VELMA A. EGBERT,)	MEMORANDUM OF DECISION
)	
Debtors.)	
_____)	

Paula Brown Sinclair, Twin Falls, Idaho, for Debtors.

William Hollifield, Twin Falls, Idaho, for Chapter 7 Trustee
R. Sam Hopkins.

HON. JIM D. PAPPAS, CHIEF U.S. BANKRUPTCY JUDGE.

Background and Facts

In this Chapter 7 case, Debtors Douglas and Velma Egbert have claimed the real property described as Lot 1, Block 48, Twin Falls Townsite exempt as their homestead pursuant to Idaho Code § § 55-1001 *et seq.* Debtors reside in one of two houses located on the property. Debtors rent the other house to tenants. The Chapter 7 Trustee, R. Sam Hopkins, timely objected to Debtors' claim of exemption as to the second dwelling. See Fed R. Bankr. Proc. 4003(b). A hearing was held on April 24, 2000 at which the parties submitted

evidence and testimony to the Court. In addition, on the same date, the parties filed a written stipulation setting forth additional facts. The parties also filed post-hearing briefs. Thereafter, the matter was taken under advisement. This Memorandum constitutes the Court's findings of fact and conclusions of law. Fed R. Bankr. Proc. 7052.

Discussion

Trustee argues Debtors' attempted use of the homestead exemption to shield the second dwelling from liquidation for creditors is improper because Debtors do not reside in the second dwelling. Trustee contends the property should be divided, and the second dwelling sold. Debtors dispute Trustee's position, urge that the entire parcel and both houses are exempt, and contend the property cannot be subdivided.

Idaho has opted-out of the federal exemptions; therefore, a debtor in bankruptcy is limited to the exemptions provided by Idaho law. See 11 U.S.C. § 522(b); Idaho Code § 11-609; *In re Crumley*, 95 I.B.C.R. 8 (Bankr. D. Idaho 1995). Trustee, as the objecting party, has the burden of proving the exemption is not proper. See Fed. R. Bankr. Proc. 4003(c). Under Idaho Code § 55-1004, Idaho residents are entitled to an exemption in a homestead. Idaho's

homestead exemption statutes must be liberally construed in favor of the debtor. See e.g., *In re Crumley*, 95 I.B.C.R. 8 (Bankr. D. Idaho 1995); *In re Peters*, 94 I.B.C.R. 44 (Bankr. D. Idaho 1994); *In re Millsap*, 91 I.B.C.R. 5, 6 (Bankr. D. Idaho 1991).

Idaho Code § 55-1001 defines a “homestead” to include “the dwelling house or the mobile home in which the owner resides or intends to reside, with appurtenant buildings, and the land on which the same are situated and by which the same are surrounded, or improved . . . used as a principal home for the owner.” Here, it is undisputed that Debtors do in fact “reside” in a “dwelling house” on the property, and that the property is “improved” by the presence of the second dwelling. The statute imposes no restrictions on what sort of additional buildings or improvements are permitted on the homestead. It would seem that Debtors’ claim to a homestead exemption on the property is consistent with the plain language of the statute.

Trustee supports his argument by citing *In re Tiffany*, 89 I.B.C.R. 221 (Bankr. D. Idaho). In *Tiffany*, the debtor claimed a homestead exemption on property on which there were located three dwellings, including a mobile home owned and occupied by a tenant. *Id.* Judge Hagan denied the exemption, reasoning in part, “[t]he fact a tenant is renting a portion of the property and

living in [his own] mobile home on the property is a material factor in determining the extent of debtor's homestead, since the tenant could conceivably also declare a homestead exemption on the property under the statute.” *Id.* at 222. Certainly, as the Court observed, the statutes contemplate that property be subject to only one potential homestead exemption. *Id.*

By contrast, there is no danger here that Debtors’ second dwelling will be claimed by others as a homestead. Debtors are the sole owners of the land and both dwellings. While they rent the second house, they do so on a month-month basis. There is no possibility that the property could be the subject of multiple homestead claims.¹

The facts in this case more closely resemble those presented in *In re Hamilton*, 96.2 I.B.C.R. 70 (Bankr. D. Idaho). In *Hamilton*, the debtors claimed the homestead exemption in a duplex, that is, one house configured into two residences. The debtors resided in one side of the duplex as their principal residence; they rented the other side to a third party. This Court sustained the

¹ To be fair, Judge Hagan did opine that the Idaho statutes should be construed to cover “only one dwelling, subject to only one homestead claim of exemption, and the land on which it is situated . . .” and that the debtor’s homestead “should be limited to the single residence and the ‘improved’ land on which it sits.” *Tiffany*, 89 I.B.C.R. at 222. However, the facts of *Tiffany* are sufficiently distinguishable to justify a departure from the result in this case. To the extent *Tiffany* can not be distinguished on this basis, this Court must respectfully disagree with the construction given the statute by that Court.

debtors' claim of the homestead exemption reasoning that the plain language of Idaho Code § 55-1001 supported the exemption. The Court declined the trustee's invitation to judicially limit the right to claim a homestead to those living in single-family residences.

The appropriate limit on the extent of the homestead exemption is found within Idaho Code § 55-1003, which restricts the exemption to the lesser of "the total net value of the lands . . . and improvements" or "the sum of fifty thousand dollars." Idaho Code § 55-1003; *see also Millsap*, 91 I.B.C.R. at 7; *Crumley*, 95 I.B.C.R. at 9; *Hamilton*, 96.2 I.B.C.R. at 71. Any attempt to abuse the homestead exemption is curbed not only by the requirement that the debtor reside on the property, but also by the \$50,000 value limitation. *See In re Gallegos*, 98.4 I.B.C.R. 113 (Bankr. D. Idaho). Here, the parties agree that net value Debtors' interest in the property is less than \$50,000.

Trustee asserts the property is divisible subject to a zoning variance. On April 24, 2000, this Court heard testimony from the Twin Falls County Planning and Zoning administrator that Debtors' lot could not be subdivided to comply with the city's minimum lot size ordinance without a zoning variance. While he did not say a variance was unobtainable, the witness indicated that only one request for a similar variance had been successful

during his 22 years of experience. In other words, the evidence was equivocal on the issue of whether the subject property could be successfully subdivided and the second residence sold.

The Court, however, need not speculate whether a variance would be granted. The issue has significance only if it is first determined that a portion of the real property is not exempt. Since here the Court concludes the entire parcel is exempt, the Court has no occasion to entertain issues about how, or if, the property could be subdivided under local law.

Conclusion

In accord with the interpretive rules requiring liberal construction of exemptions statutes, and consistent with the plain language of Idaho Code § 55-1001, Debtors have properly claimed a homestead exemption with respect to all improvements and both dwellings situated on Lot 1 Block 48, Twin Falls Townsite. Trustee's objection to Debtor's claim of exemption will be overruled by a separate order.

DATED This 13th day of June, 2000.

JIM D. PAPPAS

CHIEF U.S. BANKRUPTCY JUDGE

CERTIFICATE OF MAILING

I, the undersigned, hereby certify that I mailed a true copy of the document to which this certificate is attached, to the following named person(s) at the following address(es), on the date shown below:

Office of the U.S. Trustee
P. O. Box 110
Boise, Idaho 83701

Paula Brown Sinclair, Esq.
P. O. Box 2322
Twin Falls, Idaho 83303

William Hollifield, Esq.
P. O. Box 66
Twin Falls, Idaho 83303

Sam Hopkins
P. O. Box 3014
Pocatello, Idaho 83201

CASE NO.: 99-42066

CAMERON S. BURKE, CLERK
U.S. BANKRUPTCY COURT

DATED: June 13th, 2000

By _____
Deputy Clerk